IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1197 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

ASHISH TRADING COMPANY

Versus

MAHI PAL JAIN SON OF BHAGMAL JAIN (DELETED)

Appearance:

MRS DT SHAH for Petitioners

DELETED for Respondent No. 1

MR SUDHANSU PATEL APP for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 18/02/2000

ORAL JUDGEMENT

The present application is filed under Section 482 of the Code of Criminal Procedure. The original

complaint is filed against the so-called partners of a trading company having its office at Delhi. The main allegations in the complaint are that the respondents had come to purchase some cloth on a cash payment basis from the complainant. Thereafter, on a promise that they would pay the price on the next day, some goods was sold vide several bills on several dates from 15.7.1980 to 1.9.1980. It is alleged that goods worth a total sum of Rs.12,154.52 was sold on the assurance that payment would be made on the next day. Thereafter, the payment was not made till 8.4.1983 and hence the complaint was filed, below which a brief statement of the complainant was recorded and the impugned order was passed on the same day.

2. Besides the uncontroverted averments made in the present application, it is clear from the statements made in the complaint and before the learned Metropolitan Magistrate that vague and contradictory statements were made by the complainant. Firstly, it is stated that goods was to be sold by cash and then the goods on different dates is alleged to have been sold on the promise of payment being made on the next day. However, even after the first alleged transaction on 15.7.1980, the complainant appears to have gone on selling the goods on the same terms without insisting on payment and without making any complaint. After the last date of the alleged transaction, i.e. 1.9.1980, the complaint has been filed on 8.4.1983. No specific allegation is made against any particular person and no bill or any other material appears to have been produced before the learned Magistrate.

3. The learned Metropolitan Magistrate has straightway ordered to issue a non-bailable warrant without any further inquiry and without application of mind. In these facts and circumstances, prima facie, the complaint appears to have been filed by way of abuse of the process of law and with some ulterior motive.

4. In these facts and circumstances, the present application is allowed and the proceedings in Criminal Case No.779 of 1983 are quashed and set aside. Rule is made absolute with no order as to costs.

Sd/-

(KMG Thilake)

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